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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7777 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?  
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MOTILAL D KHATANA

Versus

UNION OF INDIA

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Appearance:

MR RV SAMPAT for Petitioner

MR SHANTILAL S SHAH for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 05/08/98

ORAL JUDGEMENT

This petition has been filed for quashing and setting aside the order dated 28th March, 1988 passed by the Security Commissioner (HQ) CCG, whereby the petitioner has been directed to retire compulsorily from service with immediate effect as per the findings,

enclosed Annexure - E and the order dated 7-6-1988 Annexure - G of the Dy. Chief Security Commissioner dismissing the appeal and affirming the order dated 28-3-1988 of punishment.

2. The petitioner was working as a Constable in the Railway Protection Force. He had put his service for about 20 years. On 23-3-1987 he had felt uneasiness reported sick on the same day and obtained sick memo from the post and thereafter he had got himself treated from the Civil Surgeon, District Civil Hospital, Bhavnagar where he was admitted on 24-4-1987 in the hospital and remained as an indoor patient till 12-5-1987 i.e for about 19 days. The Civil Surgeon of the District Civil Hospital, Bhavnagar issued a medical certificate which was countersigned by the Railway Doctor. The department treated the petitioner absent in unauthorised manner from the duty on 23-4-87 and this sickness from 24-4-87 to 12-5-87 not in strict compliance of the Rules of Grant of Leave on medical certificate. For the alleged act in the disciplinary proceedings the department framed two charges against the petitioner; (i) he remained absent in an unauthorised manner from duty on 23-4-1987 and (ii) he failed to observe Railway Medical Rules and Regulations while reporting sick with a private doctor from 24-4-1987 to 12-5-1987 i.e. 19 days. The departmental inquiry was conducted and the Disciplinary Authority considering the written defence of the petitioner dated 9-1-1988 in reply to show cause notice dated 14-12-1987, passed the following penalty by the order dated 28-3-1988.

"Compulsory retirement from service with immediate effect as per findings enclosed".

Inquiry Officer has also observed "in my personal knowledge delinquent Constable is a habitual of reporting sick now and then, hence charge no. (ii) fully proved."

3. The petitioner filed his appeal before the Appellate Authority. The Appellate Authority rejected the appeal of the petitioner by the order dated 7-6-1988 with the following observations :

"I have carefully gone through entire proceedings, order of the Disciplinary Authority and find that the Ex. Constable had remained absent from duty in an authorised manner and also failed to observe Railway Medical Rules, which shows that he has no interest in the job. His contention that he is illiterate is not correct as he has passed 8th Standard. RPF being an Armed Force of

the Union cannot afford to retain such irresponsible person in the discipline force. As the Disciplinary Authority has taken a lenient view, I do not find any ground to interfere with the orders passed by the Disciplinary Authority. The penalty imposed on him, is just and balanced. The appeal is rejected."

4. The petitioner's act was not found in consonance with S.R. 2/7 and 2/8, hence I looked into the same which reads as under :

"S.R.2/7. Should a Railway servant desire to be attended by a medical attendant of his own choice, it is not incumbent on him to place himself under the treatment of a Railway doctor. It is, however, essential that if leave of absence is required on medical certificate, a request for such leave should be made to the competent authority within 48 hours of the employee's falling ill, and, except in circumstances referred to in G.R. 3, it should be subsequently supported by a sick certificate from the competent Railway doctor.

It follows, therefore, that even if a Railway servant residing within the jurisdiction of a Railway doctor chooses to be treated by a non-Railway medical attendant, he must either present himself with a certificate in support of his illness within 48 hours of his falling ill before the competent Railway doctor who, after examination, will issue the necessary sick certificate, or, if bed-ridden, must within 48 hours send an intimation giving his full name, designation, station where working and complete residential address supported by a sick certificate from the non-Railway medical attendant to the competent Railway doctor who will then arrange to issue the necessary sick certificate either on the strength of the certificate obtained from non-Railway medical attendant or on verification by a visit. At such visits, the employee must arrange for his own medical attendant to be present as required by Code of Medical Ethics. The responsibility for failure to arrange for such attendance will be that of the employee."

2/8. If a Railway servant who is under treatment of non-Railway medical treatment fails

to appear before the competent Railway doctor within 48 hours of his falling ill, or, if bedridden, fails to send an intimation supported by a certificate from the non-Railway medical attendant, within 48 years of his falling ill to the competent Railway doctor, he renders himself liable to be treated as absent without authority and to be dealt with under the Discipline and Appeal Rules, in addition to losing his pay for the period of absence."

5. The learned counsel for the petitioner submitted that on 23-4-1987 the petitioner was ill and hence he reported the concerned Officer on 23-4-1987 and obtained sick memo from the post thereafter he went to the Civil Hospital, Bhavnagar where he was admitted and treated continuously upto 12-5-1987 as an indoor patient. He also communicated by the post-card to the competent authority regarding his illness and that he was under the treatment of the Civil Surgeon, District Civil Hospital, Bhavnagar. The major punishment has been provided under Rule 148.2 of the Railway Protection Force Rules, 1987 which contains dismissal from service, removal from service, compulsory retirement from service, and reduction in rank of grade. Minor punishment has also been provided under Rule 148.3, which contains reduction to a lower stage in the existing scale of pay, withholding of next increment with or without corresponding postponement of subsequent increments, withholding of promotion for a specified period, and removal from any office of distinction or deprivation of any special emoluments. Petty punishment has also been provided under Rule 148.4, which contains fine to any amount not exceeding seven day's pay, confinement to quarter-guard for a period not exceeding fourteen days with or without punishment drill, extra guard duty, fatigue duty or any other punitive duty and reprimand. The major punishment has been imposed on the petitioner in connection with non-observation of 2nd part of S/R 2/7. If he chooses to be treated by a non-Railway medical attendant, he must either present himself with a certificate in support of his illness within 48 hours of his falling ill before the competent Railway doctor who, after examination, will issue the necessary sick certificate, or, if bedridden, must within 48 hours send an intimation giving his full name, designation, station, where working and complete residential address supported by a sick certificate from the non-Railway medical attendant to the competent Railway doctor who will then arrange to issue the necessary sick certificate either on the strength of the certificate obtained from non-Railway

medical attendant or on verification by a visit.

6. The learned Counsel for the petitioner referred to the provisions of Rule 153.3.3 wherein it is provided that no attempt should be made to convert cases punishable under Section 16A or Section 17 into disciplinary cases nor divert cases in respect of which major punishments are impossible to the category of cases where minor or petty punishments are impossible. The provision of Section 16A and 17 are not attracted in this case. He has submitted that the Inquiry Officer has considered the past record of the petitioner while recording the findings against the petitioner which is in violation inconsistent to the Rule 155. Rule 155 which reads as under :

"155- Determination of Punishment :- In determining the punishment, the character, previous, bad record and punishment of party charged shall not be taken into consideration unless in a case where they are made subject matter of a specific charge in the proceeding itself."

7. In the present case, the petitioner was not charged for the previous character and bad record even then the inquiry officer recorded findings on the basis of his personal knowledge hence the inquiry is vitiated by the introducing of the personal knowledge. He has further contended that the impugned conduct of the petitioner is not as such in which the major punishment prescribed under Rule 148.2 could be awarded particularly in the circumstances that the petitioner fell ill and he reported the situation regarding his illness to the appropriate authority and his treatment was undergone by the Civil Surgeon, District Civil Hospital, Bhavnagar. He is not a private doctor but he is a doctor of the Government Hospital where the petitioner remained as an indoor patient for the whole period of sickness. The medical certificate issued by the Civil Surgeon, District Civil Hospital, Bhavnagar was approved and countersigned by the Railway Doctor and he was marked in the Duty Register as sick on 23-4-1984 and from 23-4-1987 to 12-5-1987. The petitioner has complied with the Rules regarding medical sickness and those rules are nothing but a procedure for the medical leave and that procedure has no statutory force. On the contrary, learned counsel for the respondent submitted that the conduct of the petitioner not intimating the Railway doctor within 48 hours with a medical certificate amount to misconduct under the Rules 146.2. The provision of S.R. 2/7 and

S.R. 2/8 are for granting of leave on medical sickness. Under Rule 146 the members of the Force are required to maintain an attitude of complete discipline and obedience to it. Any breach of these provisions enumerated on the part of the member of the Force constitute misconduct and liable to be punishable under the Railway Servants (Discipline and Appeal) Rules, 1968. He has also referred to Rule 146.2 regarding neglect of duty. No member of the Force without good and sufficient cause shall - be absent without leave or be late for any duty. Rule 147 is relating to offences relatable to duties of enrolled members. An act of absenting himself without proper intimation to his controlling authority or without sufficient cause overstaying leave granted to him or failing without reasonable cause to report himself for duty on the expiry of such leave amounts to misconduct.

Submission of the learned counsel for the respondent is that on the provisions of the above referred Rules, the Disciplinary Authority was competent to award major punishment and took lenient view in awarding compulsory retirement under Rule 148.2 (C).

9. I have given my anxious thought to the submissions made on behalf of the parties and perused the relevant papers and rules as well as regulations. So far as the charge no.1 regarding absence from duty on 23-4-1987 is concerned, admittedly he reported about sickness to the authority concerned on that very date and hence it cannot be said that he was absent from the duty without sufficient cause. That charge is not sustainable in the eye of law. So far as the second charge that the petitioner has failed to observe the Railway Medical Rules and Regulations while reporting sick, under the treatment of Private Doctor from 24-4-1987 to 12-5-1987 to Railway Doctor is concerned, it is no doubt that the petitioner is required to intimate the Railway Doctor within 48 hours as required under S.R 2/7. Though he was treated as an indoor patient by the Civil Surgeon, District Civil Hospital, Bhavnagar. His certificate was countersigned by the Railway Doctor. It can be inferred that the illness and fitness recorded by the Civil Surgeon, District Civil Hospital, Bhavnagar was approved by the Railway Doctor. Even if it is presumed that S.R. 2/7 and S.R. 2/8 have statutory force and the petitioner is a guilty of not observing the prescribed instructions to intimate the Railway Doctor within the specified period of 48 hours particularly the petitioner fell ill and was indoor patient in the Government Hospital can not amount misconduct for which major punishment can be

imposed on the petitioner. It appears from the inquiry report that the Inquiry Officer was impressed by his personal knowledge with the previous record for which the petitioner was not charged and the disciplinary proceedings were also influenced by the personal knowledge of the Inquiry Officer. Though the previous record of the petitioner was not directly based upon by the Disciplinary Authority in imposing the major punishment of compulsory retirement.

10. This Court has jurisdiction to pass an order on the quantum of penalty imposed upon the petitioner in view of the decision of Division Bench of Madras High Court in the case of S. Murugadhas Vs. State Bank of India & Anr. reported in 1997 (2) LLJ 947, wherein it is observed as follows :

"We are of the view that the punishment imposed is not only harsh and excessive but also disproportionate to the charges made against the appellant.

In the case of B.C. Chaturvedi Vs. Union of India, reported in 1996-(I), LLJ-1231, wherein the Supreme Court is held that the "Disciplinary Authority and on appeal the Appellate Authority are invested the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct, and that the High Court, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. It is further stated that the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the High Court/Tribunal it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation. It may itself in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof."

11. Any way in the circumstances of the case that confinement of the petitioner in the District Government Hospital as an indoor patient medical certificate issued by the Civil Surgeon of the Hospital was approved by the Railway Doctor, absence due to illness not amounted to negligence it is not the case wherein the major punishment could be imposed on the petitioner only for non observation of Rule in intimating Railway Doctor within 48 hours and though a proper minor punishment could be awarded. As the learned Counsel for the petitioner submitted that the Appellate Authority has not considered legality of the charge framed against the petitioner and

hence the Disciplinary Authority may be directed to consider for imposition of minor penalty or petty punishment provided under Rule 148.3. or 148.4 of the RPF Rules.

12. Considering the facts and circumstances of the case, as discussed above both the orders Annexure 'E' and 'G' annexed to the petition are liable to be quashed and set aside and minor punishment or petty punishment can be imposed by the Disciplinary Authority if it is so advised. Accordingly, the petition is allowed and the order dated 28-3-1988 Annexure-E and the order dated 7-6-1988 annexure 'G' passed by the Appellate Authority dismissing the appeal of the petitioner are quashed.

11. So far as the written arguments of the petitioner is concerned, the learned Counsel for the petitioner pointed out from the order dated 24-1-1989 of this Court wherein ad-interim reliefs to the effect that the operation of the orders Annexure - E and G were stayed upto 15-2-1989 and still continue by the order dated 21-3-1989. As such, in view of the orders of this Court, the petitioner is also entitled to be reinstated from the date of initial order Annexure - E dated 28-3-1988 with full back wages and consequential benefits subject to minor or petty punishment if awarded within two months the Disciplinary Authority from the date of production of a certified copy of this judgment. Rule is made absolute, with no order as to costs.

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